IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Carol Anne Pierson,	:	
Plaintiff,	:	
v.	:	Case No. 2:05-cv-0581
St. Bonaventure University,	:	JUDGE SMITH
Defendant.	:	

OPINION AND ORDER

On June 16, 2005, Carol Anne Pierson filed a complaint against St. Bonaventure University ("St. Bonaventure") alleging, *inter alia*, employment discrimination under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, and the State of New York's Human Rights Laws. Additionally, Ms. Pierson alleges breach of contract and a violation of the Fourteenth Amendment of the United States Constitution. In September 2005, St. Bonaventure filed a motion to dismiss, or in the alternative a motion for summary judgment, claiming that (1) this Court lacks personal jurisdiction over St. Bonaventure under both the Ohio long arm statute and the Due Process Clause of the Fourteenth Amendment; (2) the complaint fails to state a claim upon which relief can be granted under 42 U.S.C. §1983 because St. Bonaventure is a private corporation; and (3) venue is improper. For the following reasons, the Court agrees that personal jurisdiction is lacking, and it will transfer the case to the United States District Court for the Western District of New York.

I.

Procedurally, the jurisdictional question has been presented to the Court by way of a motion to dismiss and, in the

alternative, a motion for summary judgment. Each party has supported its respective motion or response with additional evidence, including affidavits and documents. It is Ms. Pierson's burden to show that personal jurisdiction exists. Compuserve v. Patterson, 89 F.3d 1257, 1261-62 (6th Cir. 1996). However, as here, where no evidentiary hearing is held on the jurisdictional issue, "the Court must consider the pleadings and affidavits in a light most favorable to the plaintiff" and the plaintiff "need only make a *prima facie* showing of jurisdiction." Id., citing Theunissen v. Matthews, 935 F.2d 1454, 1458-59 (6th Cir. 1991). The Court will analyze the parties' factual submissions in accordance with these guiding principles.

II.

In diversity cases, federal courts apply the law of the forum state to determine whether personal jurisdiction exists. LAK, Inc. v. Deer Creek Enterprises, 885 F.2d 1293, 1298 (6th Cir. 1989). "Jurisdiction may be found to exist either generally, in cases in which a defendant's 'continuous and systematic' conduct within the forum state renders that defendant amendable to suit in any lawsuit brought against it in the forum state, or specifically, in cases in which the subject matter of the lawsuit arises out of or is related to the defendant's contacts with the forum." Nationwide Mutual Ins. v. Tryg International Ins. Co., 91 F.3d 790, 793 (6th Cir. 1996)(internal citations omitted). A successful assertion of personal jurisdiction must satisfy both the state long-arm statute, Ohio Revised Code §2307.382, and constitutional due process. Reynolds v. International Amateur Athletic Fed'n, 23 F.3d 1110, 1115 (6th Cir. 1994). Although the Ohio Supreme Court has held that the Ohio long-arm statute was not intended to grant jurisdiction over nonresidents to the full extent allowed by the Due Process Clause, see Goldstein v. Christiansen, 70 Ohio St.3d 232

(1994)(per curium), the Court of Appeals has "consistently focused on whether there are sufficient minimum contacts between the nonresident defendant and the forum state so as not to offend 'traditional notions of fair play and substantial justice.'" Bird v. Parsons, 289 F.3d 865, 871 (6th Cir. 2002), quoting Calphalon Corp. V. Rowlette, 228 F.3d 718, 721 (6th Cir. 2000). This Court will therefore focus on the same question.

St. Bonaventure is a non-profit corporation organized under the laws of the State of New York. It is located in St. Bonaventure, New York, which is where the employer-employee relationship that is the subject of this action originated. In 1996, Ms. Pierson was named the Dean of Education and an associate professor at St. Bonaventure after being the Dean of Education and an associate professor at Dakota State University in South Dakota. According to Ms. Pierson, to follow the diversity initiatives instituted by the President of St. Bonaventure, Ms. Pierson allegedly put serious emphasis on modernizing the Department of Education and encouraging diversity. Through this endeavor, Ms. Pierson made several moves, which included disciplinary actions against senior faculty members as a result of their alleged discriminatory practices. Ms. Pierson claims that as a result of these actions, her employment with St. Bonaventure ended in 2002. Ms. Pierson subsequently moved to Ohio.

Viewing the facts in a light most favorable to Ms. Pierson, this Court finds it appropriate to highlight Ms. Pierson's affidavit, which sets forth several alleged contacts that St. Bonaventure has with the State of Ohio. The affidavit states:

> As a former member of the administration of Defendant, I am fully aware of its extensive relationship with the State of Ohio.
>
> That the University is located in the Western most county of New York and is less than

sixty miles from Ohio.

That Defendant is a member of the Atlantic Ten Athletic Conference.

That the University of Dayton is a member of this Conference.

That Defendant has many regular athletic events in the State of Ohio and University of Dayton [sic].

That Defendant has a nationally known basketball program which it derives significant revenue from.

That its basketball team is the main source of this revenue.

That the University of Dayton basketball exchange with Bonaventure University is one of its largest revenue generators for its basketball program.

That the Defendant had to forfeit a season of basketball in 2003 due to its improper actions and violations of NCAA rules.

That Defendant had to pay a large fee to University of Dayton in 2003 due to its breach of contract and violation of NCAA rules.

That in addition to traveling to the University of Dayton for Basketball games, the University travels there for all other varsity sport games.

That the total revenue generated by this exchange in large part funds much of its other varsity athletic programs.

That the University has a large student enrollment from the State of Ohio.

That it is estimated that about 100 students are currently and continuously enrolled from the State of Ohio at the University.

> That Defendant has attempted to derive revenue from training teachers for the State of Ohio.
>
> That Defendant had established contacts with specifically the Cleveland, Ohio, school districts to establish partnerships for teacher [sic].
>
> That, specifically, in my last two years at SBU, the undergraduate enrollment department targeted Cleveland Catholic high schools for recruitment to the undergraduate programs.
>
> That I was introduced to Padua Franciscan High School in Parma and made a trip there to begin to establish a site where SBU undergraduates in teacher education could perform their early field experience and have an Ohio student teaching experience.
>
> That Alumni organizations of the Defendant are active in the Ohio area and attempt to solicit and boost economic ties between the University and the State of Ohio.
>
> That Defendant has an ongoing and systematic business relationship with the State of Ohio in which it derives a significant source of its income.

Affidavit of Carol Anne Pierson at ¶¶14-33.

In the instant case, Ms. Pierson alleges that this Court has both specific and general jurisdiction over St. Bonaventure. This Court will begin by analyzing whether specific jurisdiction exists.

A. Specific Jurisdiction

Specific jurisdiction is exercised over a defendant in a suit arising out of or related to the defendant's contracts with the forum state. See Conti v. Pneumatic Prod. Corp., 977 F.2d 978, 981 (6th Cir. 192). Under International Shoe v. Washington, 326 U.S. 310 (1945), and its progeny, the Sixth Circuit Court of

Appeals has created a three-part test to determine whether specific jurisdiction may be exercised in compliance with the requirements of the Due Process Clause.

> First, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state.
>
> Second, the cause of action must arise from the defendant's activities there.
>
> Third, the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.

Southern Machine v. Mohasco Industries, 401 F.2d 374, 381 (6th Cir. 1968).

This Court will begin its analysis with the second prong of the Southern Machine test. In Southern Machine, the Court made it clear that the second criterion does not require "that the cause of action formally 'arise from' defendant's contacts with the forum; rather, this criterion requires only 'that the cause of action, of whatever type, have a substantial connection with the defendant's in-state activities.'" Third National Bank v. Wedge Group Inc., 882 F.2d 1087, 1091 (6th Cir. 1989), citing id. at 384 n. 27. "Only when the operative facts of the controversy are not related to the defendant's contact with the state can it be said that the cause of action does not arise from that contact." Southern Machine, 401 F.2d at 38 n. 29.

> [T]o the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and, so far as those obligations arise out of or are connected with the activities within the state, a procedure

> which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue.

International Shoe, 326 U.S. at 319.

In the instant case, Ms. Pierson alleges employment discrimination, breach of contract, and a 42 U.S.C. §1983 claim. While Ms. Pierson alleges numerous contacts that St. Bonaventure has with the State of Ohio, which range from NCAA athletic competitions to student teaching, none of Ms. Pierson's claims have a substantial connection with St. Bonaventure's Ohio activities. See e.g. Kerry Steel v. Paragon Industries, 106 F.3d 147, 152 (6th Cir. 1997)(no specific jurisdiction where the refusal to pay for nonconforming goods occurred in Oklahoma and the only relationship to the forum state is that the transaction involved a resident of the forum state). Put simply, the operative facts arising out of Ms. Pierson's causes of action, all of which occurred in either New York or South Dakota, are not related to St. Bonaventure's contact with Ohio.

Because Ms. Pierson's claims fail to arise from St. Bonaventure's activities in Ohio, this Court need not address the first and third prongs of Southern Machine. See id.; Conti, 977 F.2d at 983; LAK, 885 F.2d at 1303 ("[E]ach [Southern Machine] criterion represents an independent requirement, and failure to meet any one of the three means that personal jurisdiction may not be invoked"). Accordingly, the facts of this case are not sufficient to satisfy the due process requirements for specific jurisdiction.

B. General Jurisdiction

Although there have been a smattering of lower court decisions which have expressed the view that Ohio does not recognize the concept of "general jurisdiction" over an out-of-state defendant, the Courts of Appeals held otherwise. In LSI

Industries v. Hubbell Lighting, Inc., 232 F.3d 1369 (Fed. Cir. 2000), the court held that, although the Ohio Long-Arm Statute requires that, for jurisdiction to be exercised under the terms of the statute, the plaintiff's cause of action be related to the defendant's conduct within the State of Ohio, the Long-Arm Statute is not the exclusive means for exercising jurisdiction over out-of-state defendants. Rather, the Court of Appeals, citing the Ohio Supreme Court's decision in Perkins v. Benguet Consol. Min. Co., 158 Ohio St. 145 (1952), concluded that an Ohio court may, independent of the Long-Arm Statute, exercise personal jurisdiction over an out-of-state defendant if the defendant's contact with Ohio is sufficiently continuous and systematic to satisfy the requirements of the Due Process Clause and that such jurisdiction was not supplanted by the subsequent enactment of the Long-Arm Statute. LSI Industries, 232 F.3d at 1373; see also Hunter v. Mendoza, 197 F. Supp. 2d 964 (N.D. Ohio 2002).

Unlike the specific jurisdiction inquiry, which focuses on the relationship between the defendant's contact with the forum state and the causes of action asserted by the plaintiff, "[g]eneral jurisdiction exists when a defendant has 'continuous and systematic contacts with the forum state sufficient to justify the State's judicial power with respect to any and all claims.'" Aristech Chemical Intern. v. Acrylic Fabricators, 138 F.3d 624, 627 (6th Cir. 1998), quoting Kerry Steel v. Paragon Industries, 106 F.3d 147, 149 (6th Cir. 1997); see also Helicopteros Nacionales de Columbia v. Hall, 466 U.S. 408 (1984). Unlike the type of "minimum contacts" analysis used in the specific jurisdiction inquiry, a finding of general jurisdiction involves "a more stringent minimum contacts test," Metropolitan Life Insurance Co. v. Robertson-Ceco Corp., 84 F.3d 560, 568 (2d Cir. 1996), and "the standard for establishing general jurisdiction is 'fairly high,' Brand v. Menlove Dodge, 796 F.2d

1070, 1073 (9th Cir. 1986), and requires that the defendant's contacts be of the sort that approximate physical presence." Bancroft & Masters, Inc. v. Augusta National, Inc., 223 F.3d 1082, 1086 (9th Cir. 2000). Because of this relatively high standard, the plaintiff's burden of making a showing of contacts sufficient to satisfy the general jurisdiction requirement has been described as "difficult." Southern Systems, Inc. v. Torrid Oven, Ltd., 58 F.Supp. 2d 843, 848 (W.D. Tenn. 1999).

Because the jurisdictional inquiry is fact-intensive, see LAK, Inc., 885 F.2d 1293, it is helpful to compare the facts of this case with the facts of other cases which have considered whether general jurisdiction has been demonstrated. That comparison reveals that the type of contacts that St. Bonaventure has with the State of Ohio do not rise to the level of systematic and continuous contacts sufficient to support the exercise of general jurisdiction.

In the instant case, Ms. Pierson focuses on three types of "contacts" that St. Bonaventure has with the State of Ohio. First, Ms. Pierson highlights St. Bonaventure's participation in the Atlantic Ten Athletic Conference, which includes regular varsity sporting events with the University of Dayton, located in Dayton, Ohio. Second, Ms. Pierson cites St. Bonaventure's recruitment of Ohio students. Third, Ms. Pierson refers to St. Bonaventure's utilization of Ohio schools for field experience in teaching. In analyzing these contacts, this Court refers to three cases for guidance and support.

In Ross v. Creighton Univ., 740 F.Supp. 1319 (N.D. Ill. 1990), rev'd on other grounds, 957 F.2d 410 (7th Cir. 1992), a court determined an argument similar to Ms. Pierson's to be without merit. The plaintiff in Ross filed suit against Creighton University, which is located in Nebraska, in federal court in Chicago, Illinois, claiming that Creighton's athletic

recruitment in Illinois, as well as its participation in an athletic conference with three Illinois schools were sufficient "contacts" to establish jurisdiction. The court determined that the university's recruitment contacts with Illinois were not so substantial that Creighton could be deemed to be doing business in the State of Illinois. Id. at 1324-25. The court stated:

> Participating in a handful of athletic contests each year does not rise to the level of constructive presence in Illinois, because the contacts, though regular from year to year, are simply too few in number to be considered permanent and continuous.

Id. at 1324.

The Court of Appeals for the Third Circuit addressed similar issues in Gehling v. St. George's School of Medicine, 773 F.2d 539 (3d Cir. 1985). In Gehling, parents of students filed an action in the United States District Court for the Middle District of Pennsylvania against a medical college located in the West Indies claiming negligence, breach of contract, fraudulent misrepresentation and intentional infliction of emotional distress. The District Court dismissed the action for lack of general jurisdiction over all of the claims, and the Court of Appeals for the Third Circuit affirmed on that issue.

In reaching its conclusion, the Third Circuit Court of Appeals evaluated all of the contacts that the school had with Pennsylvania, which included advertisements in the *New York Times* and the *Wall Street Journal* (both of which were circulated in Pennsylvania), the fact that Pennsylvania residents matriculated into the medical college and paid tuition, a "media swing" undertaken by the medical school's Chancellor and Vice-chancellor in Pennsylvania to establish school notoriety and credibility, and joint international program with a Pennsylvania college. The Court held that these contacts where not "continuous and

substantial" enough to establish personal jurisdiction over the negligence and breach of contract claims, stating:

> The *New York Times* and *Wall Street Journal* are non-Pennsylvania newspapers with international circulations, and advertising in them does not constitute "continuous and substantial" contacts with the forum state. Furthermore, the fact that some of St. George's students are Pennsylvania residents does not signify a relevant business contact. Advanced educational institutions typically draw their student body from numerous states, and appellants' theory would subject them to suit on non-forum related claims in every state where a member of the student body resides. Thus, the fact that residents of the state apply and are accepted for admission to St. George's is of no moment. For the same reason, the fact that St. George's may be said to derive some percentage of its revenues from Pennsylvania residents in return for services provided in Grenada does not subject it to *in personam* jurisdiction.
>
> ***
>
> Nor do we find that the joint international program instituted by St. George's and Waynesburg constitutes "continuous and substantial" business activity by St. George's in Pennsylvania. St. George's is an educational institution that provides no educational services in Pennsylvania. Waynesburg is a separate entity that runs its own educational program under the supervision of its own trustees.... While one facet of this Pennsylvania-based educational program facilitates the admission of foreign students to St. George's Caribbean-based program, nothing in the record suggests that St. George's derives any income from educational services rendered in Pennsylvania.

Id. at 542-43 (internal citations omitted).

Finally, in Helicopteros, the United States Supreme Court

held that contacts between the nonresident defendant, Helicol, and Texas were insufficient to support the exercise of general jurisdiction. The Court noted that Helicol lacked a place of business and had never been licensed to do business in Texas. Further, the Court identified four types of contacts between Helicol and Texas: "sending its chief executive officer to Houston for a contract-negotiating session; accepting into its New York bank account checks drawn on a Houston bank; purchasing helicopters, equipment, and training services from Bell Helicopter [located in Fort Worth] for substantial sums; and sending personnel to Bell's facilities in Fort Worth for training." Helicopteros, 466 U.S. at 416.

Based on these contacts with the forum state, the Court noted that the first contact was a one-time event, and the second was "of negligible significance." Id. In reviewing the next two contacts, the Court explained that

> mere purchases, even if occurring at regular intervals, are not enough to warrant a State's assertion of in personam jurisdiction over a nonresident corporation in a cause of action not related to those purchase transactions. Nor can we conclude that the fact that Helicol sent personnel into Texas for training in connection with the purchase of helicopters and equipment in that State in any way enhanced the nature of Helicol's contacts with Texas.

Id. at 418.

After reviewing and comparing the facts of Ross, Gehling and Helicopteros to the instant case, this Court concludes that St. Bonaventure's contacts with Ohio are not "continuous and systematic" enough to establish general jurisdiction. First, while St. Bonaventure may participate in yearly athletic events in Ohio through its association with the Atlantic 10 Athletic Conference, participating in a handful of athletic contests each

year does not rise to the level of constructive presence in Ohio, because the contacts, though regular from year to year, are simply too few in number to be considered systematic and continuous. Similarly, like Helicol's use of the Fort Worth training facility in Helicopteros, sending athletic teams into Ohio to participate in sporting events in connection with the Atlantic 10 in no way enhances the nature of St. Bonaventure's contacts with Ohio given that the cause of action is not related to those contests.

Second, like the West Indies' medical college in Gehling, the fact that some of St. Bonaventure's students are Ohio residents does not signify a relevant business contact. Advanced educational institutions typically draw their student body from numerous states, and Ms. Pierson's theory would subject them to suit on non-forum related claims in every state where a member of the student body resides. Thus, the fact that Ohio residents apply and are accepted for admission to St. Bonaventure is of no moment. For the same reason, the fact that St. Bonaventure may be said to derive some percentage of its revenues from Ohio residents in return for services provided in New York does not subject it to *in personam* jurisdiction in Ohio.

Finally, in light of Gehling and Helicopteros, the Court reaches a similar conclusion in evaluating the "Ohio field experience" contact. Like the varsity sports teams traveling to Ohio, *supra*, sending students for a "field experience" within Ohio classrooms for training in connection with the education that they are receiving in New York in no way approximates physical presence in Ohio. Moreover, while one facet of this New York-based educational program facilitates a "field experience" in Ohio for students to learn about teaching, nothing in the record suggests that St. Bonaventure derives any income from educational services rendered in Ohio.

Accordingly, St. Bonaventure's contacts with Ohio are not the type of "continuous and systematic" contacts with the forum state which would justify Ohio's exercise of judicial power with respect to Ms. Pierson's claims. However, the Court notes that, even if the type of systematic and pervasive activity within the State of Ohio required by the general jurisdiction case law cited *supra* had been found, a second inquiry must also be made before the Court properly exercises such jurisdiction. That second inquiry relates to whether the exercise of jurisdiction over the defendant is reasonable in light of various factors, including the burden of the defendant of litigating in the forum state, the interest of the forum state in the subject matter of the suit, the interest of the plaintiff in litigating in the forum state, judicial efficiency, and considerations of public policy. See Metropolitan Life Ins. Co. v. Robinson-Ceco Corp. 84 F.3d 560, 572 (2d Cir. 1996).

Here, it would be a substantial burden on St. Bonaventure to litigate in the State of Ohio. Ohio has little interest in this action, given the fact that it involves an employment discrimination and breach of contract action that took place solely in the States of New York and/or South Dakota. Although Ms. Pierson does have a slight interest in litigating the case in Ohio because she currently resides in the State, judicial efficiency also suggests that the case may be more properly litigated in New York and/or South Dakota, and public policy concerns suggest that the location of the alleged conduct, which is either New York and/or South Dakota, may be a more appropriate place for litigation. Therefore, even if Ms. Pierson had succeeded in demonstrating that the contacts between St. Bonaventure and Ohio were sufficiently continuous and systematic to meet the first part of the general jurisdiction test, the Court would find that the exercise of jurisdiction under the

facts of this case would be unreasonable and would still decline to exercise such jurisdiction.

III.

Congress has enacted several statutes that give federal courts the power to transfer cases *sua sponte*. See e.g. 28 U.S.C. §1406(a)("The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or it be in the interest of justice, transfer such case to any district or division in which it could have been brought."); 28 U.S.C. §1404(a)("For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."). However, different factual scenarios are applicable to different transfer provisions. For example, because this Court concluded that it does not have personal jurisdiction over St. Bonaventure, 28 U.S.C. §1404(a) is not the applicable transfer statute. See Goldlawr, Inc. v. Heiman, 369 U.S. 463 (1962)(expressly including the lack of personal jurisdiction as one of the procedural hurdles that can be remedied by a §1406 transfer); cf. Martin v. Stokes, 623 F.2d 469 (6th Cir. 1980)(a 28 U.S.C. §1404(a) transfer may not be granted unless the court has personal jurisdiction). Accordingly, this Court must determine whether "the interest of justice" warrants a transfer of this case to a different district.

When a Court is to determine whether a transfer is in the "interest of justice," several factors are to be evaluated. See, e.g. Sinclair v. Kleindienst, 711 F.2d 291, 294 (D.C. Cir.1983)(in the "interest of justice" includes whether personal jurisdiction would be obtained in the transferee court); Pittock v. Otis Elevator Co., 8 F.3d 325, 329 (6th Cir. 1993)("interest of justice" includes whether a party would be prejudiced by a

transfer or time barred by applicable statute of limitations). As another Judge of this District stated when evaluating transfer under §1406(a):

> Selection between the options of dismissal and transfer, for improper venue, is a matter within the sound discretion of the district court. However, transfer in and of itself is generally considered to be more in the "interest of justice" than dismissal and, therefore, doubts should be resolved in favor of preserving the action, particularly when it appears that venue may be properly laid in the proposed transferee district.

Nation v. United States Government, 512 F.Supp. 121, 126-27 (S.D. Ohio 1981).

In the present case, neither party has argued, in the alternative to St. Bonaventure's motion to dismiss, that this Court should transfer the case if it lacks personal jurisdiction over St. Bonaventure. Nevertheless, the record suggests that the United States District Court for the Western District of New York may be the most appropriate venue to hear this action. St. Bonaventure is a New York corporation, with its principal place of business in New York, which indicates that the District Court for the Western District of New York has personal jurisdiction over St. Bonaventure. See Milliken v. Meyer, 311 U.S. 457 (1940)(a state has jurisdiction over those domiciled within its borders). Further, while the record does indicate that some contractual negotiations may have taken place in South Dakota, the alleged employment disputes and the employment termination occurred in New York. Finally, it does not appear that any party will be prejudiced if the case is transferred instead of dismissed. Accordingly, because it appears that venue may be properly laid in the Western District of New York and that doubts should be resolved in favor of preserving this action, in the interest of justice, the case is transferred to the United States

District Court for the Western District of New York.

IV.

In sum, this Court concludes that there is no jurisdiction, either specific or general, for it to hear Ms. Pierson's claims against St. Bonaventure. Accordingly, this Court will not address whether Ms. Pierson fails to state a claim under 42 U.S.C. §1983 or if venue in Ohio is proper. Thus, St. Bonaventure's motion to dismiss (doc. # 5) is GRANTED and the case is TRANSFERRED to the United States District Court for the Western District of New York.

/s/ George C. Smith
George C. Smith
United States District Judge